

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2013**

**Legislative Incarceration Fiscal Note**

(G.S. 120-36.7)

**BILL NUMBER:** Senate Bill 137 (First Edition)

**SHORT TITLE:** Prohibit Co-pay Waiver/Medicaid Providers.

**SPONSOR(S):** Senator Tillman

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
<b>State Impact</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
General Fund Revenues:					
General Fund Expenditures:					
Special Fund Revenues:					
Special Fund Expenditures:					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts, Indigent Defense Service, Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2013					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address a new chargeable offense and several expanded offenses being enforced, adjudicated and having penalties applied to those convicted of the new offense. However, given there is no historical data on this new offense, the expanded offenses, or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$365-\$501
- Indigent Defense Services: \$221-\$235 in district court  
\$396-\$446 in superior court without a trial  
\$1,046-\$1,180 in superior court with a trial
- Prison Section: \$2,695 - \$3,369
- Community Corrections: \$980 - \$3,158

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

This bill makes it illegal for a Medicaid provider to waive co-payments under certain circumstances and provides various types of consequences for those found in violation of the provisions of this bill.

Section 1 creates new subsection (3) of existing subsection (e) of G.S. 108SA-63, Medical assistance provider fraud, making it unlawful to knowingly and willfully execute, or attempt to execute, a scheme or artifice to waive the collection of co-payments owed by recipients of medical assistance as required under the Medical Assistance Program with the intent to induce recipients to purchase, lease or order items or services from the provider. A violation of this subsection is a Class H felony offense and conspiracy to violate is a Class 1 felony.

Subsection (g) expands the existing offense to include waiver of a co-payment owed by a recipient of medical assistance as remuneration forbidden by the offense. Violation is a Class I felony.

Subsection (h) expands the existing offense to include waiver of a co-payment owed by a recipient of medical assistance as remuneration forbidden by the offense. Violation is a Class I felony.

This bill has an effective date of December 1, 2013, and applies to acts and offenses committed on or after that date.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision (PRS). The Act also created a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of 90 days or less. All F-I felons are now subject to nine months of PRS, and PRS for all B1-E felonies has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The changes to G.S. 108A-63(e)(3) creates new Class H felony and Class I felony offenses. Because these are new offenses, AOC does not have any data upon which to estimate the number of charges that may occur annually.

The changes to G.S. 108A-63(g) and (h) expand the scope of existing Class I felony offenses. AOC does not currently have an offense code for violation of these provisions, which may be some indication that it is infrequently charged. Thus AOC is unable to estimate how many additional charges may arise from the expansion of these provisions.

While pleas to Class H and I felonies are sometimes handled in district court, many pleas and all trials for H and I felonies are handled in superior court. For every additional person charged with a Class I felony offense, AOC estimates the average cost to the court would be \$365. For every additional person charged with a Class H felony offense, AOC estimates the average cost to the court would be \$501.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with a fiscal impact analysis for criminal penalty bills that will result in greater expenditures for indigent defense. IDS estimates that the cost of a Private Appointed Counsel attorney per case for a Class H felony would be \$235 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class H felony would be \$446 if the case does not go to trial and \$1,180 if it does.

IDS estimates that the cost of a Private Appointed Counsel attorney per case for a Class I felony would be \$221 in district court. In superior court, IDS estimates that the cost of a PAC attorney per case for a Class I felony would be \$396 if the case does not go to trial and \$1,046 if it does.

### **Department of Public Safety –Prison Section**

Since the bill creates a new offense and expands several existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the new statute.

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2012.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

The cost to add one additional inmate to the prison system is \$11.23 per day, which includes the cost of food, clothing, and health care. It is estimated that 35% of Class H convictions will result in active sentences, with an average time served of ten months. The average cost to the Prison Section for any individual convicted of a Class H felony who receives an active sentence is \$3,369 (300 days times \$11.23 per day). It is estimated that 18% of Class I convictions will result in active sentences, with an average time served of six months. The average cost to the Prison Section for any individual convicted of a Class I felony who receives an active sentence is \$2,695 (240 days times \$11.23 per day).

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<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2013</b>	<b>June 30 2014</b>	<b>June 30 2015</b>	<b>June 30 2016</b>	<b>June 30 2017</b>
1. Inmates <sup>2</sup>	36,838	36,967	37,107	36,861	36,748
2. Prison Beds (Expanded Capacity)	40,718	40,970	40,970	40,970	40,970
3. Beds Over/(Under) Inmate Population	(3,880)	(4,003)	(3,863)	(4,109)	(4,222)
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

### Department of Public Safety – Community Correction Section

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. For felony offense classes E through I, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.<sup>4</sup> General supervision of intermediate and community offenders by a probation officer costs \$3.63 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Since Subsection (e)(3) of the bill creates new Class H and Class I offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed statute. Subsection (g) and Subsection (h) expand the existing offenses. AOC currently does not have a specific offense code for violations of G.S. 108A-63(g) or 108A-63(h). It is not known how many additional convictions may result from the proposed broadening of the current statute.

In FY 2011-12, 35% of Class H felony offenders received active sentences; 42% received intermediate sentences; and 23% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average lengths of intermediate and community punishment imposed for this offense class were

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2013.

<sup>3</sup> Criminal penalty bills effective December 1, 2013 should not affect prison population and bed needs until FY 2014-15 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

<sup>4</sup> CCS incurs costs of \$1.29 per day for each offender sentenced to the Community Service Work Program.

<sup>5</sup> Due to the effective date of December 1, 2013 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2012-13. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2013-14.

29 and 26 months, respectively. The average cost to community corrections for any individual convicted of a Class H felony who receives an intermediate sentence is \$3,158 (870 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class H felony who receives a supervised community sentence is \$2,831 (780 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced under the proposed bill.

In FY 2011-12, 18% of Class I felony offenders received active sentences; 33% received intermediate sentences; and 49% received community punishments. All active sentences result in nine months of post-release supervision (PRS). The cost of nine months of PRS is \$980 per offender (\$3.63 per day times 270 days).<sup>5</sup> The average lengths of intermediate and community punishment imposed for this offense class were 26 and 22 months, respectively. The average cost to community corrections for any individual convicted of a Class I felony who receives an intermediate sentence is \$2,831 (780 days times \$3.63 per day). The average cost to community corrections for any individual convicted of a Class I felony who receives a supervised community sentence is \$2,396 (660 days times \$3.63 per day). It is not known how many offenders might be convicted and sentenced to intermediate or supervised community sentences under the proposed bill.

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** Under G.S. 14-2.4, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit

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